

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging, by its attorneys, hereby replies to comments filed on July 13, 1998 in response to the Commission's *Public Notice*, DA 98-1198, released June 19, 1998, "*Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding*" (the "*Remand Public Notice*"). The following is respectfully shown:

**I. A Substantial Record Supports A Caller Pays,
Market-Based Compensation System**

Since the initiation of this proceeding in 1996, the Commission has stated that it favors a market-based system of compensation for payphone service providers ("PSPs").^{1/} However, in the initial *Report and Order*, the Commission declined to adopt a true market-based system — caller pays.

^{1/} *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20541, para. 49 (1996) ("*First Payphone Order*").

In view of the entire record of this proceeding, including two separate appeals to the United States Circuit Court for the District of Columbia, each of which resulted in a remand of the Commission's compensation scheme, as well as other appeals currently pending before both the Commission and the Court, AirTouch strongly urges the Commission to reconsider its earlier decision, and to adopt a caller pays compensation system. Doing so will bring much-needed certainty to the payphone compensation rules and will benefit all users and providers of payphone services.

Significantly, the comments filed in response to the *Remand Public Notice* demonstrate that virtually no party disputes that a market solution is in the public interest. The only PSP interests represented — the RBOC/GTE/SNET Coalition (the "RBOC Coalition") and the American Public Communications Council ("APCC") — advocate a market approach.^{2/} Among the remaining commenters, including IXCs, paging carriers, and prepaid calling card providers, there also is virtually unanimous agreement that the only valid market approach to payphone compensation is caller pays.^{3/}

^{2/} Comments of RBOC Coalition at 3; APCC at 12. Unfortunately, these parties fail to understand what constitutes a true market rate. See, e.g., APCC Comments at 12. APCC rejects a "pure" cost-based rate but refuses to concede that its adulterated "market-based rate as a proxy for costs" is far more problematic -- as the Court of Appeals confirmed.

^{3/} Comments of Personal Communications Industry Association ("PCIA") at 7-13; Skytel Communications Inc. ("Skytel") at 5; AT&T Corp. ("AT&T") at 13; Cable & Wireless, Inc. ("Cable & Wireless") at 11; Excel Communications, Inc. ("Excel") at 4; Frontier Corporation ("Frontier") at 9; LCI International Telecom Corp. ("LCI") at 10; Sprint Corporation ("Sprint") at 5-15; WorldCom, Inc. ("WorldCom") at 4-7; Competitive Telecommunications Association ("CompTel") at 17; VoCall Communications Corp. and Galaxy Long Distance ("VoCall/Galaxy") at n.5 (noting that when the Commission earlier declined to adopt caller pays it effectively abandoned the ultimate market-based solution); International Telecard Association ("ITA") at 8.

The comments responding to the *Remand Public Notice* provide substantial additional support for existing record evidence that demonstrates that there is no sound policy or legal justification for rejecting caller pays. While numerous parties supported caller pays at earlier stages of this proceeding as one option for implementing Section 276, the extensive record compiled on payphone compensation issues has resulted in caller pays emerging as the best market-based solution from among a range of options. Numerous carriers now advocate caller pays as the only true market-based compensation method and as the means of compensation that best serves the public interest. *See, e.g.*, Comments of Sprint at 5; WorldCom at 5; ITA at 6 (noting that ITA previously supported carrier pays but that the existing record does not support the Commission’s rationale for adopting carrier pays). In particular, AirTouch agrees with Sprint that the Commission should “step back and re-think, from square one, its whole approach to payphone compensation.” Comments of Sprint at 2. Sprint’s comments offer a reasoned basis for the Commission to take this opportunity to adopt a caller pays compensation system.

When the Commission declined to adopt caller pays in 1996, it cited three principal reasons: such a system would result in high transaction costs, “would appear to unduly burden many transient payphone callers by requiring them to deposit coins,” and might violate the Telephone Operator Consumer Services Improvement Act (“TOCSIA”), codified at Section 226 of the Communications Act of 1934, as amended (the “Act”).^{4/} Each of these unsubstantiated conclusions ought to be revisited at this time. First, the “carrier pays” scheme adopted in the *First Payphone Order* has — as predicted by commenters when the Commission

^{4/} *First Payphone Order*, 11 FCC Rcd at 20584-85.

originally considered the issue — imposed extremely burdensome transaction costs on IXC's, LEC's, PSP's, and consumers. Those costs likely are higher than the transaction costs of a caller pays system. *See, e.g.*, Comments of Sprint at 7; ITA at 6. The Commission never has engaged in any credible analysis of the costs of caller pays in comparison to a carrier pays plan. Such an analysis must be conducted before the Commission may make any conclusion about the relative costs.

Second, the prediction that having to pay for a service poses “undu[e] burden[s]” is, as one commenter suggests, overly paternalistic (Comments of WorldCom at 7), and also fails to acknowledge the advantages that are likely to result from caller pays. *See, e.g.*, Comments of ITA at 8. Significantly, apart from actually being required to pay for the call, the Commission cited no burdens imposed upon consumers. The requirement to pay for service is not a burden, but a reality of the marketplace. *See, e.g.*, Comments of Sprint at 7-8. Indeed, there is no real record support for the Commission’s conclusion. No party has put forth studies showing whether payphone users would rather make a per call payment at the payphone or have their underlying costs for payphone services increase. AirTouch suspects that callers would prefer to pay directly rather than indirectly.^{5/}

Finally, numerous commenters have briefed the Commission on why TOCSIA poses no legal bar to adoption of a caller pays compensation system. *See, e.g.*, Comments of PCIA at 11-13; Sprint at 8-9. *See also* Comments of Radiofone on AirTouch Paging’s Petition

^{5/} To date, the Commission’s compensation schemes have embodied some notion of indirect payment, either through increased costs for 800 subscriber users, or, if the caller is the 800 subscriber, through indirect payments to their IXC.

for Rulemaking, filed June 5, 1998, at 3. Plainly, a substantial record exists demonstrating that TOCSIA is no obstacle to a caller pays compensation system.

Although the Commission purports to favor a market-based compensation system, it consistently has attempted to implement a carrier pays scheme which is not market-based. This approach has been rejected by the Court. If, notwithstanding the Court's views, the Commission in this remand proceeding again retains a carrier-pays compensation system, it may not do so in the guise of a "market-based rate". Instead, the Commission must implement carrier pays within a cost-based system, as most commenters suggest.^{6/} According to analyses performed by the various commenters, a cost-based rate yields per-call compensation of between \$.08 and \$.15.^{7/} Alone among the commenters who are in a position to have reliable information, MCI has submitted substantial cost data to support its figure. To the extent that the Commission's compensation methodology relies on the cost of providing access to payphone service, the MCI cost data should be relied on by the Commission.^{8/}

II. AirTouch's Proposed Caller Pays Alternative Also Serves the Public Interest

AirTouch has proposed that the Commission establish and dedicate a unique 8XX code, or range of numbers within such a code, for toll-free calls placed from payphones in which

^{6/} See Comments of AT&T at 15; Cable & Wireless at 9; Excel at 9; Frontier at 8; LCI at 8; MCI at 7; Sprint at 15; CompTel at 18; VoCall/Galaxy at 6.

^{7/} See Comments of Cable & Wireless at 10 (\$.15 per call maximum); Excel at 12 (\$.13 per call maximum); LCI at 9 (\$.15 per call); MCI at 7 (\$.08 - \$.12 per call); Sprint at 18 (\$.143 per call); CompTel at 19 (\$.15 per call maximum).

^{8/} Still noticeably absent from the record is any cost data from the RBOCs. The RBOCs repeatedly have failed to provide any of their own cost data. This omission alone should alert the Commission to the distinct possibility that even the cost-based rates suggested by MCI and others may be too high.

a coin deposit is required to complete the call. *See Public Notice*, Report No. 2274, released May 6, 1998. If the Commission continues to refuse to adopt a true market-based approach — caller pays — for all compensable calls, then it must, consistent with the public interest, consider whether such an approach is warranted for a subset of calls that otherwise might not be completed. AirTouch's proposal, which already has received substantial support, offers the same benefits as a universal caller pays system, without disturbing the Commission's existing compensation scheme.

AirTouch's proposal is an alternative market-based compensation method responsive to specific issues raised in the *Remand Public Notice*. If the Commission continues to reject caller pays, then in light of the clear public interest benefits of the AirTouch proposal, the Commission should issue a Notice of Proposed Rulemaking tentatively concluding that the public interest would be served by dedicating an NXX code as proposed by AirTouch, and seeking comment on issues associated with implementing such a code. This NPRM should be incorporated into the Commission's order addressing the matters set forth in the *Remand Public Notice*.

III. The Approach Advocated by the RBOC Coalition and APCC Must Be Rejected

The RBOC Coalition and APCC continue to advocate a hybrid compensation system: they argue that the local coin rate is an appropriate surrogate for a market rate for dial-around and subscriber 800 payphone calls, but then overlay an avoided cost analysis to account for differences in the costs of providing non-coin calls.

The approach of the RBOC Coalition and APCC is surprising given the Court's explicit rejection of the Commission's previous attempts to implement a combination of market

surrogate and avoided cost methodologies — and in light of the Commission’s explicit request for cost data in order to remedy previous errors cited by the Court. These parties’ conclusion that the local coin rate is an appropriate surrogate is based on certain assumptions about costs, and yet — ignoring the Court and the *Remand Public Notice* — they have supplied no evidence whatsoever to support these assumptions. They simply refuse to provide cost data to the Commission. The reason is obvious: they are enjoying windfall profits under the Commission’s carrier pays scheme, and are unwilling to provide evidence that would prove that the default rate is excessive.

Based on the questions raised in the *Remand Public Notice*, the Commission now appears to understand that unless it can demonstrate that rates and costs for dial-around and subscriber 800 calls placed from payphones converge, no carrier pays compensation plan can withstand judicial review. Rather than assist the Commission in these efforts by supplying cost data — data which they are uniquely in a position to provide — the RBOC Coalition and APCC have chosen to obstruct the Commission’s efforts to compile a complete record responsive to the Court’s concerns. The appropriate response by the Commission to these parties’ transparent tactics is to reject their arguments.


WHEREFORE, the foregoing premises duly considered, AirTouch Paging respectfully requests that the Commission adopt payphone compensation for PSPs consistent with the foregoing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle A. Harris, hereby certify that I have on this 27th day of July, 1998, caused a true and correct copy of AirTouch Paging's foregoing "Reply Comments" to be sent to the following, by hand or by first-class United States mail, postage prepaid:

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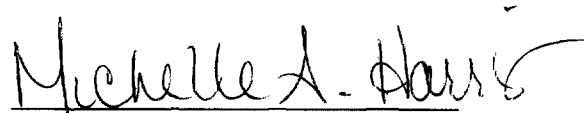
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